

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HENOK MEKONEN,

Plaintiff,

v.

Case No. SA-23-CV-00025-JKP

CHRISTINE WORMUTH, ACTING
SECRETARY OF THE ARMY;

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is U.S. Magistrate Judge Elizabeth S. Chestney's Report and Recommendation (R&R) entered in the above-captioned cause. *See* ECF No. 10. The parties have not filed any objections to the R&R and the deadline to do so has passed. Judge Chestney recommends the Court dismiss this case for want of prosecution and failure to follow a court order. After due consideration, the Court **ADOPTS** the R&R in its entirety (ECF No. 10) and **DISMISSES** this case with prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

LEGAL STANDARD

In a case such as this, where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review. *See* 28 U.S.C. § 636(b)(1). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

BACKGROUND

Plaintiff, who is proceeding *pro se*, filed this case on January 6, 2023, against Christine Wormuth, as Acting Secretary of the Army, alleging violations of Title VII of the Civil Rights Act of 1964. At Plaintiff's request, on January 13, 2023, the clerk issued the summons to Defendant at the address listed on Plaintiff's request for summons. On April 12, 2023, when the summons still had not been returned, Judge Chestney issued an Order regarding the issue of service in this case. *See* ECF No. 7. In the Order, Judge Chestney explained the summons requested and issued for Defendant does not appear to comply with Federal Rule of Civil Procedure 4(i). The Order further explained that to properly serve an officer of a United States Agency in an official or individual capacity, a party must serve the United States, as well as the agency, corporation, office, or employee. *See* Fed. R. Civ. P. 4(i)(2) and 4(i)(3). Judge Chestney then *sua sponte* extended the time for proper service under Rule 4(i) until May 11, 2023, warning Plaintiff that a failure to properly serve Defendant under Rule 4(i) could result in dismissal for want of prosecution.

In response to Judge Chestney's order, Plaintiff filed a document on May 15, 2023, reflecting the mailing of a letter to counsel for Defendant on May 10, 2023, via United States Postal Service Express Mail. *See* ECF No. 8. Because Plaintiff still had not requested summons to serve Defendant pursuant to Rule 4(i), Judge Chestney entered another order on June 20, 2023, giving Plaintiff one last opportunity to correctly effectuate service under Rule 4(i). *See* ECF No. 9. This order was even more explicit, directing Plaintiff to request issuance of summons and send a copy of the summons and Complaint via registered or certified mail to specific parties pursuant to 32 C.F.R. § 516.14. This order warned Plaintiff that failure to serve Defendant under Rule 4(i) by July 14, 2023 could result in dismissal for want of prosecution. *See* Fed. R. Civ. P.

41(b). More than a month has passed since the deadline Judge Chestney set and Plaintiff has not filed a return of service. No other action has been taken in this case. Judge Chestney, therefore, recommends dismissal of this case for want of prosecution and failure to follow a court order.

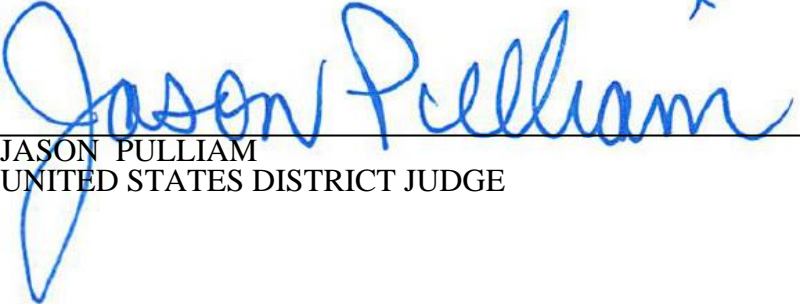
CONCLUSION

After reviewing the R&R for clear error, the Court finds it to be neither clearly erroneous nor contrary to law. *See* 28 U.S.C. § 636(b)(1)(C). The Court, therefore, **ACCEPTS** the Magistrate Judge's findings and recommendations and **ADOPTS** the R&R in its entirety. *See* ECF No. 10. The Court further **DISMISSES** the case with prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

The Clerk of Court is instructed to **CLOSE THIS CASE**.

It is so ORDERED.

SIGNED this 24th day of August, 2023.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE